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amnesty international

EAST TIMOR
Truth, justice and redress

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Six years ago this month, at least 100 East Timorese and possibly many more were killed or "disappeared" as they took part in a peaceful demonstration in Dili, the capital of East Timor. The level of outcry about the events persuaded the Indonesian Government to establish an inquiry with the result that 10 members of the Indonesian Armed Forces were sentenced to short terms of imprisonment for their role in the massacre. The government's response was not, however, adequate.

Truth, justice and redress, three major principles identified in international human rights standards, form the foundations of an effective remedy to serious human rights violations. Together they act as a framework for addressing human rights violations of the past and provide safeguards against their repetition in the future. Efforts to establish the truth and the locating of victims, which may at last open the way for proper burials and mourning, will go some way to help relieve the pain of uncertainty suffered by victims' families. Once the truth has been established, governments have an obligation to bring perpetrators to justice, which in turn can contribute to preventing such violations occurring in the future by demonstrating that those who commit serious human rights violations will not be exempt from punishment. Finally, governments also have an obligation to set right a situation in which a person has been harmed, and to repair damage done, through compensation for victims' families.

Since the Santa Cruz massacre, Amnesty International has urged the Indonesian Government to make amends by fully and independently investigating the massacre, holding those responsible to account and providing compensation to the victims. The Indonesian Government could have learnt valuable lessons from the Santa Cruz massacre and taken measures which would ensure that such an event would never happen again. However because the government ignored recommendations for the establishment of mechanisms to systematically and fully investigate allegations of human rights violations, the conditions persist which allow the security forces to commit violations safe in the knowledge that they are unlikely to be investigated or prosecuted. Amnesty International is again urging the Indonesian Government to ensure that the lessons of Santa Cruz are not lost.

Abiding by the three principles of truth, justice and redress is especially important against the backdrop of the United Nations sponsored talks between the Indonesian Government and East Timor's former colonial ruler, Portugal, as well as attempts to foster intra-Timorese dialogue. Establishing the truth about the past and ensuring justice and adequate redress for victims would contribute enormously to efforts at finding a long term and durable solution to the East Timor issue. It would also help to check the current high level of human rights violations in East Timor which undermine and block broader efforts at reconciliation and political settlement.

KEYWORDS:

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EAST TIMOR
Truth, justice and redress

"...the Santa Cruz killings should not be regarded as a thing of the past. They must not be forgotten, and there is still time to correct the shortcomings...it is not too late to conduct proper investigations, to identify and bring to justice the perpetrators, to determine the fate and whereabouts of the missing persons, to grant compensation to the victims of the relatives, and to prevent the occurrence of further killings."[1]

Six years ago this month, at least 100 East Timorese and possibly many more were killed or "disappeared" as they took part in a peaceful demonstration in Dili, the capital of East Timor. The level of outcry about the events persuaded the Indonesian Government to establish an inquiry with the result that 10 members of the Indonesian Armed Forces were sentenced to short terms of imprisonment for their role in the massacre. The government's response was not, however, adequate.

Truth, justice and redress, three major principles identified in international human rights standards, form the foundations of an effective remedy to serious human rights violations. Together they act as a framework for addressing human rights violations of the past and provide safeguards against their repetition in the future. Efforts to establish the truth and the locating of victims, which may at last open the way for proper burials and mourning, will go some way to help relieve the pain of uncertainty suffered by victims' families. Once the truth has been established, governments have an obligation to bring perpetrators to justice, which in turn can contribute to preventing such violations occurring in the future by demonstrating that those who commit serious human rights violations will not be exempt from punishment. Finally, governments also have an obligation to set right a situation in which a person has been harmed, and to repair damage done, through compensation for victims' families.

Since the Santa Cruz massacre, Amnesty International has urged the Indonesian Government to make amends by fully and independently investigating the massacre, holding those responsible to account and providing compensation to the victims. The Indonesian Government could have learnt valuable lessons from the Santa Cruz massacre and taken measures which would ensure that such an event would never happen again. However because the government ignored recommendations for the establishment of mechanisms to systematically and fully investigate allegations of human rights violations, the conditions persist which allow the security forces to commit violations safe in the knowledge that they

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[1]Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Indonesia and East Timor in July 1994, E/CN.4/1995/61/Add.1, 1 November 1994, paragraph 77.

are unlikely to be investigated or prosecuted. Amnesty International is again urging the Indonesian Government to ensure that the lessons of Santa Cruz are not lost.

Abiding by the three principles of truth, justice and redress is especially important against the backdrop of the United Nations sponsored talks between the Indonesian Government and East Timor's former colonial ruler, Portugal, as well as attempts to foster intra-Timorese dialogue. Establishing the truth about the past and ensuring justice and adequate redress for victims would contribute enormously to efforts at finding a long term and durable solution to the East Timor issue. It would also help to check the current high level of human rights violations in East Timor which undermine and block broader efforts at reconciliation and political settlement.

Some recent cases of serious human rights violations in Indonesia and East Timor - including killings and "disappearances" - have been investigated.[2] But such investigations remain the exception rather than the rule and the investigations themselves have not always been conducted thoroughly or by independent bodies. Numerous killings and "disappearances" and other human rights violations that have occurred during and since the Santa Cruz massacre have not been investigated and the perpetrators have not been held responsible.

In a recent move the government set up a branch of the Indonesian National Commission on Human Rights, (Komnas HAM) in Dili, East Timor. This apparently positive development hides serious short comings. The office is restricted in its ability to function effectively by the heavy military surveillance in East Timor and does not systematically investigate human rights violations. Past violations have not been addressed by the National Commission. Moreover, the Komnas HAM office, which is viewed by East Timorese as an Indonesian body, does not have the trust of the local population and it is difficult to see that it could gain such trust without being a genuinely East Timorese body.

A recent spate of unlawful killings alleged to have been committed by the armed resistance in East Timor also remain uninvestigated. During the general elections in East Timor, the East Timorese National Liberation Army, *Falintil*, attacked military and civilian targets. Resistance sources admitted to some of the civilian deaths.[3] Amnesty International has publicly condemned the *Falintil* attacks against civilians. There have been several more

[2]For example, two soldiers were jailed in 1995, following an investigation into the killing of six men in Liquisa, East Timor, who the soldiers had claimed were "guerrillas". In July 1996, a soldier was sentenced to eight months' jail for the unlawful killing of Paulo dos Reis who had allegedly verbally abused the soldier and thrown a stone at him.

[3]For example, the killing of two civilians, Miguel Baptismo da Silva and his wife (whose name is not known) in Baucau on 28 May 1997.

recent allegations of civilians killed by *Falintil*, but it is not possible independently to investigate these allegations because of restrictions on access to East Timor imposed by the Indonesian Government.

Investigations, prosecutions and compensation

United Nations principles outline the processes which should be applied in cases of alleged human rights violations. These require that:[4]

- governments make every effort to prevent extrajudicial executions and "disappearances" and to cooperate fully with international investigations into such violations;
- there should be prompt, thorough and impartial investigations into all cases of extrajudicial executions and "disappearances";
- investigative authorities have sufficient power to obtain all information necessary for such investigations and the necessary budgetary and technical resources for effective investigation; such authorities should also have sufficient power to oblige officials allegedly involved in any such human rights violations to appear and testify;
- the bodies of those allegedly subjected to extrajudicial executions should not be disposed of until an adequate and impartial autopsy is conducted by a physician who should have expertise in forensic pathology; if the body has been buried, it should be exhumed for an autopsy; the autopsy shall attempt to determine the identity of the deceased and the cause and manner of death;
- complainants, witnesses, those conducting the investigation and their families shall be protected from intimidation, threats or violence;
- a public written report should be made available on the method and findings of the investigation;
- perpetrators identified by the investigation should be brought to justice in trials which meet international standards of fairness;

[4] United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; United Nations Declaration on the Protection of all Persons from Enforced Disappearance.

- the families and dependents of victims shall be entitled to fair and adequate compensation within a reasonable period of time.

The investigation into the Santa Cruz massacre did not meet these standards, neither have investigations into more recent cases of alleged human rights violations in East Timor. Today there is still no mechanism in the territory to allow for full and impartial investigations into human rights violations and to bring those believed responsible to justice according to the United Nations principles referred to above. In view of this, Amnesty International considers that it is imperative that the Indonesian Government take the following steps to address past and continuing human rights violations:

- establish an indigenous East Timorese independent human rights commission.[5] It should include human rights observers with the expertise and credibility necessary to effectively monitor and investigate alleged human rights violations. It should include representatives of East Timorese civil society with demonstrated impartiality. At a minimum the commission should be able to receive complaints from any person or group, interview people in private (including detainees), travel freely and have unrestricted access to all places, including places of detention. Protection should be provided to witnesses.

- ensure that all violations of human rights, including those in the past such as the Santa Cruz massacre, are independently and fully investigated;

- suspend from active duty all those members of the armed forces, including the police, implicated in human rights violations, including torture and ill-treatment, pending inquires into their actions. Those responsible for human rights violations should be prosecuted in trials which meet international standards of fairness;

- provide compensation to the victims of human rights violations and their families, including the victims or families of victims from the Santa Cruz massacre;

- ensure that national human rights groups are able to carry out their work without fear of harassment or intimidation of themselves, victims or victims' families;

[5]This Commission must at a minimum be consistent with the standards on national institutions outlined in the United Nations *Principles relating to the status of national institutions,* Annex to Resolution 1992/54 on National institutions for the promotion and protection of human rights.

- provide access for international human rights monitors.[6]

The Santa Cruz killings

Much has been written about the massacre which took place in Dili, East Timor on 12 November 1991, when Indonesian troops opened fire on a peaceful pro-independence march towards the Santa Cruz Cemetery.[7] In the years since the killings, the suffering of the families who lost sons, daughters, brothers and sisters has continued as the Indonesian Government has failed in its responsibility thoroughly to investigate the human rights violations that took place that day, bring those responsible to justice and compensate the victims or their families.

In the immediate aftermath of the massacre, the Indonesian Government announced the establishment of a National Commission of Inquiry, comprised of representatives from government ministries and the Armed Forces. The inquiry concluded that the number of people killed was "about 50" but it did not identify the victims.[8] The Chair of the Commission admitted that the inquiry was hampered by the fact that the East Timorese "...were all too afraid to talk". Of the 19 bodies acknowledged by the authorities to have been found, only one - that of Kamal Bamadhaj, the only foreigner to have been killed - has ever been returned to the families affected. Following the inquiry, one soldier was convicted of assault and sentenced to 17 months imprisonment. Nine others were convicted of disobeying orders or failing to control subordinates and sentenced to prison terms ranging from eight months to 18 months. A number of other high-ranking officers were removed

[6]Independent international human rights monitoring is accepted in most countries throughout the world. For example, in the last two years Amnesty International has visited Australia, Bougainville in Papua New Guinea, Cambodia, North Korea, China, Malaysia, Singapore, Thailand, and the Philippines, but the organization continues to be restricted in access to Indonesia and East Timor.

[7]The demonstration was held to commemorate the death of an East Timorese man stabbed during a confrontation in Dili in October 1991. Between three and four thousand people marched through Dili to the Santa Cruz Cemetery where the security forces opened fire on the crowd.

[8]The actual number of those killed and "disappeared" during the massacre is not known. The Indonesian Military claimed that 19 were killed, but in 1993 the government provided Human Rights Watch/Asia with a list of 84 names, 66 of whom were said to be missing. There are doubts about the names on the list, only 29 appeared on lists compiled by independent sources and at least one of those on the list was arrested in late 1992 and was in custody at the time that the list was compiled. Despite the fact that the list was supposed to include 18 who had been killed during the massacre, the list made no reference to Kamal Bamadhaj, the only person to have been positively identified following the massacre. Non-governmental sources have claimed that the real figure of dead and "disappeared" is significantly higher.

from their posts. None were tried for murder. In contrast to the punishment meted out to the soldiers, six East Timorese, accused of organizing the peaceful Santa Cruz demonstration, are still in prison, serving sentences of up to life imprisonment.[9]

The response from the authorities prompted the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to comment:

> *"...the inadequacy of the charges and the inappropriately light sentences imposed by the court martial on the few members of the armed forces accused of having been implicated in the 12 November 1991 incident are in no way a fulfilment of the obligation to punish perpetrators, and thus to provide a deterrent for the recurrence of a similar tragedy in the future."*[10]

The Indonesian Government was also criticised by the UN Commission on Human Rights (CHR) for its inadequate response to the events. During a visit by the UN High Commissioner for Human Rights to Indonesia in December 1995, the Indonesian Government claimed that it was continuing to search for those missing from the events and that "charitable" organizations had assumed the role of providing compensation to the families of the victims. Casting doubt on this claim, the Indonesian Government were also reported by the High Commissioner as saying that "*the Government had recognised its responsibility and had investigated and punished those found guilty of crimes*". Amnesty International is unaware of any efforts by the government to continue the investigation into the events.

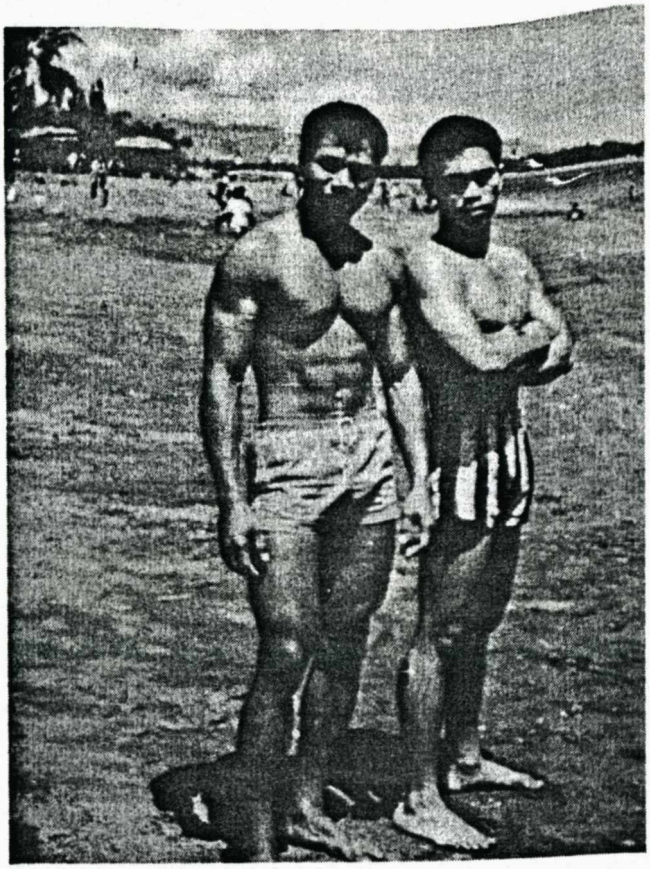
Families of Santa Cruz victims are still waiting, six years on, for the Indonesian authorities to clarify what happened on the day of the massacre. The following cases are just three examples among many victims whose fate and whereabouts has still not been established. All of the families interviewed by Amnesty International urged the Indonesian Government to establish mechanisms allowing for the independent investigation of the Santa Cruz killings and other human rights violations.

Francisco da Silva

Francisco da Silva, 19, was a national bodybuilding champion and a high school student, studying social science. He was one of around three to four thousand Timorese youths who

[9]The six are Fernando de Araujo, (nine years' imprisonment) and João Freitas da Camara (10 years) both imprisoned in Cipinang Prison, Jakarta; and Francisco Miranda Branco, (15 years), Gregorio da Cunha Saldanha (life imprisonment), Jacinto das Neves Raimundo Alves (10 years) and Saturnino da Costa Belo (nine years) all detained in Semarang, Central Java.

[10]Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a mission to Indonesia and East Timor. E/CN.4/1995/61/Add.1, 1 November 1994, paragraph 70(g).



Francisco da Silva (on the left).

joined the demonstration on 12 November 1991, and one of those who has not been seen since. His family still do not know exactly what happened to him, but they believe that he was shot twice and then taken to Dili's military hospital where he died. The family have been told by friends that Francisco was shot in the temple and in the chest, but was still alive when he was taken to hospital. Another friend who was wounded during the shooting and sent to the same hospital, claims that later that night Francisco was stabbed five times by soldiers who came into their ward.

In the days following the massacre, Francisco da Silva's family, not knowing whether he was alive or not, went to the International Committee of the Red Cross (ICRC) and to the Catholic Bishop of East Timor, Bishop Belo, to ask for help to find out what had happened to their son. They did not make inquiries with the Armed Forces or the police because they thought that this would bring suspicion upon the family and ultimately make their situation worse. They were also unable to make enquiries at the hospital where they believed that Francisco had been taken because it was tightly guarded by the military.

One member of the family met with the National Commission of Inquiry which investigated the massacre. He asked the members of the National Commission where Francisco's body was and demanded that the body be returned to the family. He claimed to have received no reply and the family has had no contact with the authorities since. Francisco da Silva's name did not appear on the list of 84 names provided by the Indonesian Government of those killed or missing, however his "disappearance" has been confirmed by several non-governmental sources.

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, impartial and summary execution...
Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Francisco's brother, Carlos Borromeo, told Amnesty International that his family can only speculate where his body is buried since they have never been formally told. Carlos Borromeo, like many other East Timorese, still believes there is a need for an independent inquiry into the events at Santa Cruz. He does not accept that the previous inquiry can be regarded as independent.

Egilio

Egilio - whose real name cannot be revealed because of fears for the safety of family members still in East Timor - is believed to have been killed during the Santa Cruz massacre. Egilio, a school student in Dili, was around 15 or 16 years old in November 1991. He is believed to have been shot in the leg while he was inside the cemetery and taken to the military hospital. Amnesty International interviewed Egilio's cousin, who has since left East Timor and is living in Portugal. Although he was nearby at the time that Egilio was shot, he did not see what happened, but heard Egilio shout out for his mother. The cousin was himself shot during the massacre.

On the day of the massacre, Egilio's family went to the military hospital to try and find their son, but were told by hospital officials that he was not there. They also asked the Armed Forces and the police whether Egilio had been arrested, but the response was negative.

Egilio's family believe that he was taken to Dili's military hospital and other sources have confirmed this. For around two or three weeks they continued to try and trace him at the hospital and also in military custody with the Armed Forces but got no response. They had no contact with the National Commission of Inquiry but around two or three weeks after the massacre, Egilio's cousin claims that soldiers came to his aunt's house and questioned her about why her son had joined the demonstration. There was no other contact with government officials concerning Egilio's fate or whereabouts despite the fact that under his real name, he appears on the Indonesian Government's list of those killed or missing as a result of the massacre.

An investigation....should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.
Article 13 (6) of the UN Declaration on the Protection of All Persons from Enforced Disappearance.

Egilio's cousin says that the Santa Cruz demonstration was only the second protest that Egilio had ever joined. He says that his aunt still cries about Egilio. He believes that until Egilio's body is returned to the family or they are told where he is buried, the family will not feel able to rebuild their lives.

Fernando

Fernando - not his real name - was a 19 year old high school student who "disappeared" after taking part in the Santa Cruz demonstration. His family, worried about reprisals even now, do not want to reveal his real name. Fernando did not tell his family that he was going to join the demonstration but left early in the morning. Amnesty International interviewed Fernando's younger sister who was also at the demonstration, but was separated from Fernando when the shooting began and still does not know what happened to him. A friend told the family that he saw Fernando with blood all over his body trying to escape from the cemetery by climbing over the wall. However his injuries prevented him from getting out.

In the days after the massacre, the Indonesian authorities announced over the radio in Dili that the families of missing people should go to the military hospital to identify the wounded. Fernando's two sisters went to the hospital but claim that when they arrived a policeman asked them why they had come and threatened them with violence if they did not go home and so they left.

Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation.
Principle 15 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions .

Fernando's family still do not know what happened to him. His sister told Amnesty International that the family investigated the possibility that he had been imprisoned in Kupang, West Timor, along with others taken into custody after the massacre. They also contacted others who were wounded and taken to Wirahusada, the military hospital, but were not successful in gathering any more information on his fate. The family had no contact with the National Commission of Inquiry, or any other representative of the Indonesian Government or the Armed Forces, despite the fact that, under his real name, he is one of those acknowledged by the government as either missing or killed. Fernando's sister says that her father does not believe that Fernando is dead. He will not be convinced, she says, until the family receive his body.

The families and dependents of victims of extra-legal, summary or arbitrary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Principle 20 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Amnesty International believes that it is not too late to make amends for the human rights violations committed during the Santa Cruz massacre. By establishing independent mechanisms for the investigation of human rights violations and bringing those responsible to justice, the Indonesian Government could address one of the most fundamental causes of human rights violations in East Timor, a lack of accountability for the Armed Forces. Such a step could also go a long way to ensuring that human rights in East Timor are be protected in the future.